

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA.

Case No. 3:19-cr-00060-MMD-WGC-1

Plaintiff,

ORDER

STEVEN BRYAN.

Defendant.

I. SUMMARY

This order provides the Court’s reasoning for its minute order (ECF No. 105) that offered a summary ruling on the government’s motion in limine (ECF No. 77 (“Motion”)) requesting the Court preclude Defendant from introducing certain statements he made. As indicated in the minute order, the Court will deny the Motion in part and defer ruling on the Motion in part.

II. BACKGROUND

Defendant is charged with first-degree murder for shooting and killing his son, K.B., with an AR-15 rifle on or about December 13, 2019. (ECF Nos. 1, 65.) Shortly after the incident, Defendant made several statements to law enforcement and family and friends that indicate he shot K.B. in self-defense. (ECF No. 77 at 3.) Defendant first called 911 and informed the dispatcher that he had shot K.B., that K.B. was deceased, and that K.B. had attacked him with a hammer. (ECF No. 98 at 2.) Around that same time, Defendant also called his brother, J.B., and left a voice message that said “I need help, come up here, bye.” (*Id.*) Defendant also called his friend Rupert Powers and said “Burt, I’m going to jail, I need help, come up here and take care of my son . . . Kyle attacked me with a hammer, bye.” (*Id.*) Upon arrival, law enforcement officers who were wearing body cameras recorded Defendant weeping and expressing concern for his younger son, T.B.

1 (Id.) Defendant also made statements to the FBI during a custodial interview
2 approximately 12 hours after the incident. (Id. at 3.)

3 The government now seeks to preclude Defendant from introducing these
4 statements.

5 **III. DISCUSSION**

6 At issue are the following categories of evidence: (1) Defendant's statements made
7 to family and friends and statements made to law enforcement at the time of his arrest,
8 (2) body camera footage at the time of Defendant's arrest, and (3) Defendant's
9 statements made during his FBI interrogation. The Court will address each category of
10 evidence.

11 **A. Statements Made Before Defendant's Arrest**

12 The government objects to Defendant introducing statements he made on a 911
13 call, on a phone call to his friend X, on a phone call to his friend Y, and to law enforcement
14 when they arrived on the scene. Although these statements are hearsay, they are
15 admissible because they fall under the excited utterance exception.

16 An excited utterance is “[a] statement relating to a startling event or condition,
17 made while the declarant was under the stress of excitement that it caused.” Fed. R. Evid.
18 803)(2). The district court must determine that the declarant was “so excited or distraught”
19 at the time of the statement “that he did not reflect (or have an opportunity to reflect) on
20 what he was saying.” *United States v. McLennan*, 563 F.2d 943, 948 (9th Cir. 1977).
21 “Rather than focusing solely on the time a statement was made, courts must ‘consider
22 other factors, including the age of the declarant, the characteristics of the event[,] and the
23 subject matter of the statements.’” *United State v. Howard*, Case No. 2:18-cr-00135-JAD-
24 GWF, 2020 WL 1318790, at *2 (D. Nev. Mar. 20, 2020) (quoting *United States v. Rivera*,
25 43 F.3d 1291, 1296 (9th Cir. 1995)); *see also Navarette v. Cal.*, 572 U.S. 393, 400 (2014)
26 (“Unsurprisingly, 911 calls that would otherwise be inadmissible hearsay have often been
27 admitted [under 803(2)].”). Moreover, the Ninth Circuit has rejected the argument that
28 responses to police questioning “must necessarily be the product of reflection” and

1 therefore not excited utterances. *People of the Territory of Guam v. Cepeda*, 69 F.3d 369,
2 372 (9th Cir. 1995); see also *People of the Territory of Guam v. Ignacio*, 10 F.3d 608, 615
3 (9th Cir. 1993) (considering that a child abuse victim's responses to police questioning
4 hours after the fact were admissible because the abuse was "likely extremely traumatic"
5 and it was reasonable to assume that the declarant "still would have been under the stress
6 of it").

7 The Court finds that statements Defendant made between the time of the incident
8 and the time he was arrested are admissible as excited utterances. Although Defendant's
9 prior statements that he offers himself are hearsay and are not excluded from the
10 prohibition against hearsay under Federal Rule of Evidence 801(d), they may still be
11 admissible if they fall within a hearsay exception. Here, Defendant's statements were
12 sufficiently contemporaneous with the incident, and he appears to still be under the stress
13 of a traumatic event. Defendant made his statements to friends and law enforcement
14 within approximately fifteen minutes after the time that Defendant had shot and killed his
15 own son in the middle of the night, an event which was likely extremely traumatic and
16 from which Defendant was likely still under extreme stress. The body camera footage of
17 Defendant crying and worrying about his younger son when law enforcement arrives, only
18 further confirms that Defendant was still under the stress of the incident. The Motion will
19 therefore be denied as to these statements.

20 **B. Body Camera Footage of Defendant**

21 The government also seeks to exclude body camera footage of Defendant crying
22 when law enforcement arrives because they claim it is irrelevant. But the Court agrees
23 with Defendant that the body camera footage is probative of Defendant's state of mind.
24 (ECF No. 77 at 9.) While Defendant's display of emotion after-the-fact is not dispositive
25 of whether he acted with premeditation, nor does it prove or disprove whether Defendant
26 acted in self-defense, the Court agrees with Defendant that his after-the-fact demeanor
27 is highly probative of his mental state around the time of the killing. (ECF No. 98 at 2.)
28 Accordingly, the Court finds they are relevant to the defense. Moreover, as explained

1 above, any statements Defendant made that were captured by the body camera footage
2 are admissible for their truth under the excited utterance exception to the hearsay rule.
3 See Fed. R. Evid. 803(2). Defendant's non-verbal demeanor and expressions of concern
4 for his son are not statements, nor are they offered for their truth, so they are therefore
5 not hearsay and the Court will not exclude them. The Motion is therefore denied as to the
6 body camera footage.

7 **C. Defendant's Statements During the FBI Interrogation**

8 The government also seeks to prevent Defendant from introducing exculpatory
9 statements he made during his FBI interrogation because they took place more than 12
10 hours after the incident. Defendant responds that the statements he made to law
11 enforcement are admissible under several rules of evidence, including: (1) as prior
12 statements to rebut an implied assertion that he fabricated his testimony, (2) as an excited
13 utterance, or (3) to provide a complete and unbiased record under the common law rule
14 of completeness. (ECF No. 98 at 8-12.)

15 The Court agrees that if Defendant testifies, his prior statements to the FBI will be
16 admissible under Federal Rule of Evidence 801(d)(1)(B)(i). Defendant may introduce his
17 statements made to the FBI to demonstrate that they are consistent with his testimony at
18 trial, and with his statements made on his 911 call, to his friends and family, and to law
19 enforcement on the scene. Although Rule 801(d)(1)(B)(i) requires that Defendant's
20 statements before the alleged improper motive to fabricate a defense arose, the
21 defendant's statements need not "rebut all improper influences or motives . . . [i]t is
22 sufficient if the prior statement tends to rebut one of them." *United States v. Kootswatowa*,
23 893 F.3d 1127, 1134-35 (9th Cir. 2018). Although the statements Defendant made to the
24 FBI were in response to law enforcement and may not rebut the government's implied
25 charge that Defendant lied about K.B. attacking him with a hammer, Defendant's
26 continued consistent statements about K.B.'s attack from moments after the event does
27 rebut the implied charge that he fabricated this defense in response to being arrested or
28 charged with first-degree murder.

1 However, the Court will defer ruling on whether his statements to the FBI are
2 admissible under the excited utterance exception until it is apparent that Defendant will
3 not testify. The Court notes that although Defendant may have still been under the stress
4 of the incident and also may not have had a reasonable time to reflect during the time he
5 was in custody after being taken from the scene of the incident between 3:00 a.m. and
6 4:00 a.m., the fact that the interview took place 12 hours after the incident weighs against
7 the inference that they were spontaneous and made without opportunity for reflection.

8 The Court will also defer ruling on whether Defendant's statements to the FBI may
9 be introduced according to the rule of completeness. If the government introduces
10 portions of Defendant's statements to the FBI, the Court will hear argument regarding the
11 propriety of introducing unrecorded oral statements to prevent bias or prejudice to
12 Defendant.

13 **IV. CONCLUSION**

14 The Court notes that the parties made several arguments and cited to several
15 cases not discussed above. The Court has reviewed these arguments and cases and
16 determines that they do not warrant discussion as they do not affect the outcome of the
17 motions before the Court.

18 It is therefore ordered that the government's motion in limine (ECF No. 77) is
19 denied in part and ruling is deferred in part as specified herein.

20 DATED THIS 9th Day of June 2021.

21
22
23
24
25
26
27
28



MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE